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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,580	09/16/2003	Horacio Abramson	36120	3950

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EXAMINER

SWIGER III, JAMES L

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/663,580	Applicant(s) ABRAMSON, HORACIO	
	Examiner James L. Swiger	Art Unit 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/4/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure is objected to because of the following informalities:

On page 3, line 7, please change "has got many" to --has many--.

Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claims 7-9 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim 4, because a multiple dependent claim should refer to other claims in the alternative only --, and/or, -- and cannot depend from any other multiple dependent claims. See MPEP § 608.01(n). Accordingly, the claims 5-9 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant states that the values to construct the material of the apparatus should follow the values according to ASTM F382-95. Though approximate values are given in the specification, the claims are indefinite as to which values are being claimed with respect to the invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to what the applicant means by 'the greater wall forming said slot.' This could mean the wall of the bar end, or the wall of the actual hole. Since a corresponding hole would require that it be bored through two plates, does 'greater' imply the upper plate only? Clarification is required. For the purposes of examination, the overlapping plates will be treated as a single, threaded hole, that corresponds to a screw that is inherently threaded.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Nuss et al. (U.S. Patent No. 6,024,759, cited by applicant). Nuss et al. disclose a device having a bar (10) with a flattened cross section with opposing ends (see profile in Fig. 1b) capable of being appropriately curved, and has a minimum bending strength (Col. 5). Nuss et al. also disclose a bar with end portions (see fig. 1b) that are capable of being associated with opposing end plates (36), that are in turn capable of being fixed to the costal arcs via fixation holes (64). Nuss et al. further disclose a device wherein the fixing plates and the bar have essentially the same thickness (fig. 12), but the endplates have a reduced thickness for planar grooves (104), and the bar is capable of having ends of reduced thickness (Col. 4, lines 58-67). The plates also have a plurality of holes (64, 66 and 110), and have at least two of those consecutive holes in the planar, cooperating portion (110), and the endplates themselves are capable of being substantially

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rectangular (Col. 7, lines 6-8). The wall thicknesses of the bar end portion and the slot region are substantially the same height (Fig. 12), the plates are capable of being linked by threaded elements (such as a screw: Col. 7, line 65), that may form removable and axially registrable attachments (Col. 11, lines 11-22, and 37-56). Nuss et al. further disclose a device wherein the attachment elements between the plate and the tapered portion are substantially cylindrical (90), are fittingly and selectively related to two consecutive holes and that have head contours that overlap the greater edges of the tapered portion (Fig. 17) and are capable of being screws in use (mentioned supra).

With regards to claim 4, Nuss et al. further disclose a device that has a method with the steps of making two small incisions (Col. 10, lines 30-35), shaping a pre-sternum channel (Col. 10, lines 34-40), inserting a previously-shaped and curved bar (Col. 10, lines 10-12), applying the fixing plates at the costal planes (Col. 11, lines 25-36), and externally compressing the sternum body to fit the contour, mounting the tapered portions of the bar ends and securing the portions with the screws (Col. 10-11).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nuss et al. '759 in view of Dall et al. (U.S. Patent No. 5,665,089). Nuss et al. disclose the claimed invention except for a plate that has threaded holes for use with the screws for

affixing the elements together. Dall et al. disclose a longitudinal plate that has threaded holes (Fig. 17) that better engages the threaded screw to the threaded plate (Col. 5, lines 58-67 to Col. 6, lines 1-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Nuss et al. having at least threaded holes in the plate in view of Dall et al. to better secure the two plates together in use with a threaded screw.

***Allowable Subject Matter***

Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

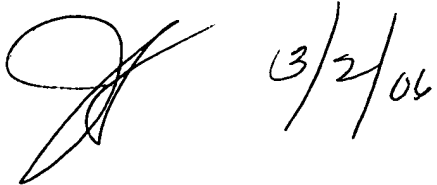

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JLS

Handwritten signature and date 3/2/06.Handwritten signature of Eduardo C. Robert.  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER